

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned On Briefs June 17, 2009

TAMMY JO GORDON, ET VIR v. WAYNE BEARD, ET UX.

**Direct Appeal from the Chancery Court for Maury County
No. 08-661 Jim T. Hamilton, Judge**

No. M2008-02465-COA-R3-CV - Filed July 22, 2009

Defendants appeal the trial court's reformation of a deed of trust and its finding that Plaintiffs own property free of any encumbrance. We dismiss for lack of a final judgment.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

DAVID R. FARMER, J., delivered the opinion of the court, in which HOLLY M. KIRBY, J., and J. STEVEN STAFFORD, J., joined.

Joe F. Fowlkes, Pulaski, Tennessee, for the Appellants, Wayne Beard and Jo Ann Beard.

L. Robert Grefseng, Columbia, Tennessee, for the Appellees, Tammy Jo Gordon and Ronald Dale Gordon.

MEMORANDUM OPINION¹

This appeal arises from a declaratory judgment action filed by Tammy Jo Gordon (Ms. Gordon) and Ronald Dale Gordon (Mr. Gordon; collectively, "the Gordons") against Ms. Gordon's parents, Wayne Beard and Jo Ann Beard ("the Beards"), in the Chancery Court for Maury County on September 3, 2008. In their complaint, the Gordons alleged that a dispute existed between them and the Beards regarding the enforceability of a lien under a recorded deed of trust held by the Beards on property deeded by the Beards to the Gordons. They alleged the Beards were attempting to foreclose on the property, which was used by the Gordons as their primary place of residence.

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

They sought a temporary restraining order enjoining the Beards from foreclosing on the property and a declaration of the rights and obligations of the parties under the deed, note and deed of trust. In their prayer for relief, the Gordons sought a declaration that the “security documents are erroneous and a mistake, and therefore should be reformed to properly reflect the agreement of the parties.” In paragraph seven of their complaint, the Gordons stated:

The above described property consists of real estate and a residential structure located thereon, which was used by the Plaintiffs as their primary residence. This structure is covered by a policy of insurance issued by the Tennessee Farmers Mutual Insurance Company. The Plaintiffs have recently suffered a fire loss, and therefore expect to be compensated for said loss under said policy of insurance[, t]o the extent there is any such recovery. Plaintiffs also request that this Court adjudicate the rights and obligations of the parties to said insurance proceeds, if the Defendants have any claim or interest to said proceeds, as a result of the alleged Deed of Trust noted above.

On September 3, the trial court entered a temporary restraining order restraining and enjoining the Beards from auctioning, selling or offering to sell the real property pending the hearing of the matter. Following a hearing on September 24, the trial court concluded that, despite the deed of trust, the true intent of the parties was that the property was to be given to the Gordons in fee simple absolute, and that the Beards would never seek to collect the indebtedness under the note and deed of trust. The trial court held that the Gordons owned the property in fee simple absolute and free of any encumbrance, including the recorded deed of trust. The trial also court ruled that the Beards were forever barred from enforcement of the note under the statute of limitations provided at Tennessee Code Annotated § 28-3-109(a)(3). The trial court entered judgment on October 2, 2008, and the Beards filed a notice of appeal on October 21, 2008. This matter was assigned to the Western section of this Court in June 2009.

On appeal, the Beards assert the trial court erred by admitting parol evidence to alter and modify the terms and conditions of the deed of trust. They further assert that the trial court erred by holding that they were barred from enforcing the deed of trust under Tennessee Code Annotated § 28-3-109(a)(3). Although neither party to this lawsuit has raised the issue of whether the order appealed is a final judgment, we must review the record *sua sponte* to determine whether we have jurisdiction to adjudicate this appeal. *State ex rel Garrison v. Scobey*, No. W2007-02367-COA-R3-JV, 2008 WL 4648359, at *4 (Tenn. Ct. App. Oct. 22, 2008); Tenn. R. App. P. 13(b).

Rule 3(a) of the Tennessee Rules of Appellate Procedure provides, in relevant part:

In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right. Except as otherwise permitted in rule 9 and in Rule 54.02 Tennessee Rules of Civil Procedure, if multiple parties or multiple claims for relief are involved in an action,

any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

Under certain circumstances, a judgment which adjudicates fewer than all of the claims asserted by the parties may be made final and appealable pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure. In order to enter judgment under Rule 54.02, however, the trial court must make an explicit finding that there is “no just reason for delay” and must expressly direct that a final judgment be entered. In the absence of an order meeting the requirements of Rule 54.02, any trial court order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not final or appealable as of right. *E.g., State ex rel Garrison v. Scobey*, WL 4648359, at *5.

In this case, the trial court has not adjudicated the Gordons’ demand for a declaratory judgment concerning the rights and obligations of the parties to any proceeds of insurance. Because this claim has not been adjudicated, the trial court’s order of October 2, 2008, is not a final judgment. Accordingly, we do not have jurisdiction to adjudicate the issues raised on appeal.

In light of the foregoing, this appeal is dismissed. Costs of this appeal are taxed to the Appellants, Wayne Beard and Jo Ann Beard, and to their surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE